



WORLD MOVEMENT *for* DEMOCRACY

Confronting the Challenges to Democracy in the 21st Century

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East Africa Sub Regional Workshop on *Defending Civil Society*

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REPORT

I. Background & Objectives

In February 2008, the World Movement for Democracy (World Movement) in conjunction with the International Center for Not-for-Profit Law (ICNL) co-authored a report addressing recent backlashes against democracy and threats to civil society across the globe, particularly efforts by various governments to restrict the space in which civil society organizations operate. The report also outlined international principles for the defense of civil society that should be promoted for international adoption.

Since the report was published in February 2008, governments have continued to repress democratic principles by instituting legal measures to further limit the operating spheres of civil society organizations (CSOs) and human rights defenders (HRDs) working to protect democracy and basic human rights. In many developing and fledgling democratic states, CSOs are being met by legal obstacles that restrict their capacity to operate through government mandates that include barriers to resources, to access to information, and to the ability to assemble freely. East African CSOs and HRDs in particular have been met by an onslaught of restrictive legislation by back-sliding democracies that drastically limit their ability to operate freely.

On April 19, 2009, the World Movement for Democracy, in collaboration with the East and Horn of African Human Rights Defenders Network, organized a East Africa sub-regional workshop, bringing together 19 human rights defenders from eight countries in East Africa: Burundi, Ethiopia, Kenya, Rwanda, Somalia, Sudan, Tanzania, and Uganda.

In his opening statement the Project Manager for the World Movement for Democracy stated that the report, *Defending Civil Society*, may be used as a guide to international principles protecting civil society and the organizations that work to strengthen it. The report can and has been used as an advocacy tool to place pressure on governments attempting to pass restrictive legal measures, as a basis for facilitating national discussion on restrictions already in place, and as a strategy tool for HRDs and CSOs actively working against measures that limit the ability to operate within their respective countries.

The objectives of the workshop were as follows:

1. To gather information on recent developments that restrict the operations of HRDs and CSOs;
2. To identify best practices for promoting the assistance of HRDs and CSOs operating in restrictive environments; and

3. To share tactics for combating institutionalized and legal barriers to HRD and CSO operations.

II. Introduction

In her opening statement a member of civil society from Uganda highlighted the problems facing Ugandan HRDs following 2006's NGO Registration (Amendment) Act, which she deemed "obnoxious" in its undermining of prevailing good governance standards and inconsistent promise to strengthen civil society through partnerships with the government. Many have called the NGO Act unconstitutional.¹ Rather than strengthening relationships between NGOs and the Ugandan government, the law gives Ugandan Internal Affairs direct oversight and control of CSOs' operational structures, necessitates complicated and difficult-to-obtain permits for various activities, restricts an NGO's ability to make direct contact with the nation's citizenry, and requires the NGO to alert Internal Affairs seven days in advance of any assembly or meeting.²

According to the speaker, laws such as this are inconsistent with the democratic Ugandan Constitution and indicate a move toward dictatorial governance and away from democracy. Such measures not only limit the operating environment for HRDs and CSOs, but weaken the greater human rights movement by creating uncertainty for long-term strategizing and staff recruitment by HRDs and CSOs.

To close, she offered the following as strategic measures for fighting against the operating restrictions brought on by governments:

- "Clean our houses" – ensure that CSO operating structures are uncorrupt to avoid becoming targets for hypocrisy or bad governance, to maintain transparency and gain the support of constituents, and to ensure a clearly-defined strategy for success;
- Forge CSO-alliances nationally and regionally- strengthen the fight, gain and share tactical resources, and create a unified stance to place pressure on governments and lawmakers;
- Place the struggle for freedom from government constraints in the citizen's perspective-devise strategies to remove elitism from the process of defending human rights and civil society.

III. Updating Defending Civil Society to address recent developments

This session's objective was to draw from the experiences of various East African HRDs to update the *Defending Civil Society* report with recent developments in restrictions to HRD and CSO operations.

A civil society organization director from Uganda noted recent restrictive measures against CSOs in Uganda such as the 2006 NGO law, the Regulation of Interception of Communications Bill 2007,³ legalized 90-day detention without trial, and other legislation publicized as battling terrorism⁴ but that

¹ The Uganda National NGO Forum, under the direction of Arthur Larok, a participant in April 19th's workshop, called the NGO Act unconstitutional in an April 2009 release *Challenging the NGO Registration (Amendment) Act of 2006 in the Constitutional Court of Uganda*. <http://www.ngoforum.or.ug/news/newsDetails.php?unique=63>

² The Ugandan National NGO Forum. *The NGO Act, Regulations and Policy in Uganda: The History, Contentions and Suggestions. A Briefing Paper 2009*. April 2009. pp 3-5.

³ The proposed bill, known as "the phone tapping bill," was published in March 2007 and is currently under consideration by the Ugandan Parliament. Maseruka, Josephine and Paul Kiwuuwa. *Uganda: Phone Tapping Contradicts Constitution – Watchdog*. 25 March 2009. <http://allafrica.com/stories/200903260178.html>

⁴ The Anti-Terrorism Act of 2002 in Uganda loosely defines terrorism in a way that could include CSOs and organizations engaging in democracy-assistance, limits the ability to assemble freely, and allows for the interception

inadvertently restricts the operating environments of NGOs working to strengthen civil society and defend human rights. He argued that there is no history of institutionalized human rights in East Africa upon which to build, that governments of the region have always treated citizens as subjects and worked to quell any mobilizations to strengthen civil society.

As strategies for working against such limits in Uganda, the director argued that HRDs should forge cross-sector alliances with academics, politicians, churches, and students. HRD networks can only be strengthened by additional knowledge and resources from academics and students; the mobilization of citizens can only be aided by partnering with other mobilizing institutions such as political parties and churches.

The tenuous situation for HRDs in Ethiopia was presented in great detail by a participant from the country. Since the 2005 elections,⁵ the disputed Ethiopian government has instituted a series of measures to systematically restrict the operations of HRDs and CSOs. He offered the following examples:

- under current legislation, an NGO that seeks to engage in the Ethiopian electoral process must obtain a permit from the government;
- an NGO may not engage in both voter education and election monitoring – it may only take part in one of these two processes;
- if denied a permit to engage in election monitoring or voter education, there is no process in place for an NGO to appeal to a court;
- the Freedom of Information Law gives the government wide discretion and restriction of information released to the media;
- the proposed Counter-Terrorism Law, currently being considered by the parliament characterizes protests and demonstrations which block traffic as criminal and acts of terrorism;
- January 2009's NGO Bill⁶ is particularly threatening to civil society:
 - the law seeks to classify NGOs within categories of Foreign, Resident, or Ethiopian based on the organization's funding;
 - an organization that receives more than 10% of its funding from a foreign source is legally banned from working to support human rights or women's rights, electoral monitoring, or other core operations of CSOs;⁷
 - the government's Charities and Societies Agency has unfettered powers to control NGOs' operating structures, approve of registration and permit obtainment, and

of communications vaguely defined as being used "in connection with terrorism." Hon. S.B. Bossa and Titus Mulindwa. *The Anti-Terrorism Act 2002 (Uganda): Human Rights Concerns and Implications – a paper presented to the International Commission of Jurists*. 15 September, 2004. pp 5-9.

⁵ Since the May 2005 national elections in Ethiopia, several allegations of undemocratic activity have emerged including the banning of protests by the Ethiopian government during the campaign and subsequent election, government harassment of opposition parties, and the imprisonment of independent journalists are among the accusations by CSOs and election observers. Lyons, Terrence. "Ethiopia 2005: The Beginning of a Transition?" *Africa Notes* (2006): 1-8. Center for Strategic and International Studies. 9 May 2009.

⁶ Ethiopia's Charities and Societies Proclamation law, passed in January 2009, potentially criminalizes the human rights activities of both foreign and domestic NGOs and seeks to impose strict government control and harsh penalties on NGOs. Amnesty International, *Ethiopian parliament adopts repressive new NGO law*, 8 January 2009. Online. UNHCR Refworld, available at: <http://www.unhcr.org/refworld/docid/49670bb914.html> [accessed 10 May 2009]

⁷ The presenter noted that given the weak Ethiopian economy and the prevalence of poverty throughout the nation, raising money from strictly Ethiopian sources is difficult at best and the vast majority of Ethiopian NGOs rely on well more than 10% of their funding from foreign sources.

- monitor the organization's activities; the Agency must also be notified seven days in advance if an NGO plans to hold an assembly or meeting;
- the law stipulates that at least 70% of an NGO's budget must be spent on programmatic activities, that only 30% may go toward an organization's operational costs.

He concluded that Ethiopia's operating environment for HRDs is particularly tenuous in East Africa and the future remains uncertain for NGOs who cannot acquire the necessary domestic funding or ensure an operating budget of only 30%. Others seconded these grave concerns, citing Ethiopia's case as an extreme one and noting that surely the Ethiopian government must receive more than 10% of its operating budget from foreign sources.

Addressing recent developments in Rwanda, an executive director began by stating that the Rwandan genocide of 1994 is a constant backdrop in the struggle for defending human rights and the operations of HRDs and CSOs. To build a strategy in defense of human rights and to mobilize Rwandan civil society, one must always take into account the ideological divisions along the ethnic lines drawn during the 1994 genocide. Its legacy created many different civil societies and thus creates difficulty for HRDs and CSOs when attempting to mobilize large groups of Rwandans around a common cause.

The current Rwandan government has established numerous laws to restrict the operating environment of HRDs and CSOs. For example, each NGO must register with the Rwandan government each year in order to operate legally. This creates uncertainty for the long-term strategizing of organizations that lack resources or capacity to navigate the complex process of government registration.⁸ Each NGO is required to present all financial documents to the overseeing government agency for its review in favor of or against registration approval. These requirements demonstrate a shift away from democratic governance by allowing strict government control of the existence of freely-formed citizen organizations and human rights defenders.

To obtain a permit from the Rwandan government to operate legally, an NGO or HRD must have the capacity to operate in all ten Rwandan provinces. Such requirements make it extremely harder for grassroots NGOs with limited resources to legally operate in local or provincial communities.

Finally, the government has legal jurisdiction over communications among CSOs in Rwanda, a clear violation of the democratic principle of the free exchange of information and the freedom of speech.

In closing, it was argued that international forces such as the UN were encouraging such behaviors by appeasing the Rwandan government because of its relative successes in establishing stability since the 1994 genocide. Rather than rewarding the government, the presenter encouraged the international community to denounce such activities as undemocratic and put pressure on the Rwandan government to reform.

In response to the other presentations a participant from Kenya posited that East African HRDs were sandwiched between rule *of* law and rule *by* law. Within this context, he urged the workshop participants to look at the situation from the citizen's perspective, to ask civil society itself what its needs entail and how government reforms would impact their individual lives. He argued that when the

⁸ East Horn of Africa Human Rights Defenders Project, "Rwanda."
<http://www.defenddefenders.org/html/rwanda.html>

state is cornered by a mobilized civil society, it will have no choice but to reform. But as long as CSOs and HRDs operate on a level removed from civil society itself, reforms will not be possible.

One participant from Uganda pointed out that “de-elitizing” the struggle for Human Rights is made particularly difficult in a country like Uganda facing a constant tension between democratizing forces – such as HRDs attempting to mobilize the grassroots – and the political elite working for regime concentration to maintain a monopoly on power. The government works to ensure that CSOs and HRDs do not have access to rural citizens, thereby preventing grassroots mobilization that would bring the struggle for Human Rights to the citizen’s attention.

In response, a member of a human rights organization offered the following strategies to engage with the political elite and mobilize the grassroots:

- Analyze national legislation in a cross-country and regional comparative study to inform HRDs and CSOs;
- Raise awareness of the core principles of civil society development throughout the region;
- Assert the role of HRDs and CSOs by engaging in dialogue with governments; and
- Actively challenge restrictive and draconian legislation.

IV. Sharing Tactics for Working in Restrictive Legal Environments

A participant from Khartoum presented the specific circumstances facing Sudanese HRDs, such as 2006’s NGO law requiring annual licensing of NGOs, the ability of government to check an NGO’s financial statements at whim, and the stipulation that foreign NGOs as defined by the government are legally banned from working in the Sudan. She urged legal reforms as a tactic for improving the operating environment for NGOs limited by bills such as this one.

A representative from Uganda followed by arguing that HRDs should go beyond working for legal reforms and focus on safeguarding and expanding the operating space for all NGOs in an effort to strengthen the fight. “We can’t divorce the quest of improving [HRDs’] operating environment; we must seek autonomy for all civil society NGOs,” he said. He echoed other’s proposals to form cross-sector alliances in an effort to strengthen the fight and expand the overall operating environment, but stressed the importance of keeping such alliances and networks informal, ensuring they are not subject to legal restrictions and formal registration under such NGO laws as those presented from Uganda, Ethiopia, Rwanda and Sudan.

He underlined previous claims to mobilize the grassroots by taking direct public action such as a demonstration to mobilize the public and rediscover the power within people. This theme was a constant throughout the working group, as all the organizations represented at the table agreed the sub-region was in crisis and in drastic need of a people-powered mobilization for reform. This strategy is strengthened by the claims for cross-sector networking, since taking the movement to churches and other people-powered institutions will help in “de-elitizing” the cause and spreading the word at the grassroots level.

Finally, the presenter proposed that East African CSOs work together to redefine the nature of an NGO in acknowledgement of NGO Bills and in an effort to stay ahead of such restrictive measures by governments. If HRDs and CSOs define themselves in a way that maintains their operating capacity but

changes their operational structure, they may not be subjected to abide by legislation that constrains their operating environment.

Journalists face uniquely dangerous challenges in an effort to provide free information to the people, often openly denouncing government measures to violate human rights. One journalist from Somalia characterized the situation in East Africa for journalists and the media. Because the role of journalists is uniquely public, they are particularly subjected to government restriction and even violence. More recently, East African governments are introducing Anti-Terrorism Bills that often target journalists who speak out against their governments, allowing them to be arrested randomly and with no due process, as was the case for one Somali journalist who traveled to Rasmala and was arrested upon his return simply for having traveled there. Anti-terrorism measures have been at the forefront of politics and legislation since September 11, 2001, and, Osman argued, freedom of expression has been a particular victim of such measures.

Free access to information has also been a victim of the anti-terrorism measures as governments clamp down on transparency to deter terrorists from gaining access to sensitive information. This has also meant that journalists and other well-intentioned citizens have lost access to information, as evidenced by the example of the Somali Government's refusal to provide the media with access to the actual Media Law and its provisions. In Sudan, security agencies are visit media houses to threaten and deter journalists from presenting any stories that counter the Sudanese government.⁹ And following 2005's crackdown on the media in Ethiopia,¹⁰ the country's journalists received no international support and remain controlled by a government that is continually praised by the international community for its "strides" in democracy despite these undemocratic tactics.

As strategies to combat government restrictions, Osman offered the following:

- Engage with, rather than boycott, draconian governments and lawmakers – boycotting elections and disengaging with restrictive lawmakers and government officials is counterproductive to the efforts of HRDs and serves to reinforce the efforts of suppressive governments to weaken and immobilize civil society;
- Restructure HRDs and CSOs to become membership organizations – organizations such as labor unions with an active and invested membership base are more effective at mobilizing stakeholders for a common, unified cause; and
- Lobby internationally recognized institutions such as the UN to publicly denounce oppressive governments – when private Western NGOs such as Medecins Sans Frontieres or Amnesty International condemn oppressive East African governments, they challenge a government's legitimacy and are thus ignored; if internationally recognized legal institutions such as the UN publicly condemn such governments, they are more likely to pay attention.

V. Action Plan: Promoting Defending Civil Society Principles

⁹ "(International Press Institute) :: Sudan." [IPI World Press Freedom Review](http://www.freemedia.at/cms/ipi/freedom_detail.html?country=/KW0001/KW0004/KW0104/). International Press Institute. 10 May 2009 <http://www.freemedia.at/cms/ipi/freedom_detail.html?country=/KW0001/KW0004/KW0104/>.

¹⁰ "(International Press Institute) :: Ethiopia." [World Press Freedom Review](http://www.freemedia.at/cms/ipi/freedom_detail.html?country=/KW0001/KW0006/KW0155/). International Press Institute. 10 May 2009 <http://www.freemedia.at/cms/ipi/freedom_detail.html?country=/KW0001/KW0006/KW0155/>.

To open the final session of the working group discussions, the chair of the session expressed the need to refine the group's concerns and identify specific actions to take to institutionalize the various principles outlined in *Defending Civil Society*. The following strategies were identified:

An attorney from Tanzania, focused on the need to reform repressive legislation and identified the following four tactics:

- Lobby legislators to amend the constitution;
- Refrain from recognizing laws that restrict NGOs' operating environments;
- Reform legal frameworks that promote the restriction of NGO operations; and
- Form regional networks to assist one another in identifying tactics for legislative reform.

A participant from Ethiopia placed special emphasis on coalition-building and forming sub-regional networks, offering the following tactics:

- Form sub-regional coalitions to create an early-warning system to identify indicators of the "domino effect" of government back-sliding on human rights that has occurred in East Africa;
- Engage networks to carry out workshops on strategies for success in mobilizing civil society, tactics for working through limiting legislation, capacity building, and other coping mechanisms; and
- Lobby collectively to target a specific nation's laws in need of reform.

In discussions following the presentations, the following strategies were identified by the group:

- Within sub-regional networks, identify a visible leader or representative to make public condemnations and lead protests and demonstrations – the more visible that leader, the less likely for him/her to be quieted, harmed, or disappeared by a repressive government;
- Lobby donors to publicly denounce repressive governments and their actions;
- Translate international principles (such as the *Defending Civil Society* report) into local languages for the average citizen to access and understand; and
- Within sub-regional networks, identify and publish a "black list" of draconian legislation to distribute to participating CSOs encouraging them to unite in civil disobedience of such laws.

Summary

Throughout the East Africa sub-regional workshop on *Defending Civil Society*, several overarching goals emerged for HRDs and CSOs to address as they continue to combat restrictive measures that limit their operating environments.

De-elitize the movement, mobilize grassroots

Participants continuously mentioned the necessity of establishing a civil society agenda, defined by the grassroots constituency, and ensure that the struggle is accessible – structurally and linguistically – to average citizens. Related to this concern was the need to focus efforts on mobilizing the grassroots citizenry in defense of their own human rights and in condemnation of repressive governments. The following actions were identified as strategies to achieve this goal:

- Let citizens - rather than donors, politicians, or special interests - define the civil society's agenda;
- Raise awareness of the core principles of civil society development throughout the region by translating core human rights and civil society principles into local languages and distributing documents such as the *Defending Civil Society* report widely and publicly;
- Educate citizens of the difference between an NGO's initiatives and the governments, as many citizens are unaware of the difference and fail to realize when they are being aided by an NGO or HRD and not a government; and
- Restructure CSOs to become membership organizations that mimic labor unions.

Circumvent draconian legislation

The need to "avoid, not evade" draconian legislation was identified repeatedly as a necessity for ensuring a conducive operating environment for HRDs and CSOs. This can be achieved, it was argued, by reforming CSOs to become loosely defined networks of individuals that can operate outside of limiting NGO laws and anti-terrorism laws. Following a similar line was the suggestion by several participants to altogether ignore restrictive laws, identifying them as illegitimate. The following actions were identified as strategies to achieve this goal:

- Resist corruption of CSOs by maintaining clear goals and transparent activities within a state's legitimate legal framework;
- Engage with, rather than boycott, draconian governments and lawmakers;
- Refuse to comply with limiting legal restrictions such as registering with a government agency or notifying officials seven days prior to an assembly;
- Lobby internationally recognized institutions such as the UN to publicly denounce oppressive governments and laws; and
- Lobby donors to publicly denounce oppressive governments and laws.

Strengthen Networks

Several participants at the workshop agreed that strengthening sub-regional networks would help the cause of East African civil society groups to share tactics for avoiding draconian legislation and repressive government actions, unite in condemning a particular government action or legislation, and for the creation of a proposed early-warning system to alert HRDs and CSOs when a government's actions begin to slide away from democracy. In addition to sub-regional networks, many participants echoed a need to form cross-sector networks, drawing on academics, labor unions, youth organizations, churches, and other civil society institutions to strengthen the base of constituents needed to mobilize around a particular cause or issue. The following actions were identified as strategies to achieve this goal:

- Forge cross-sector alliances with academics, politicians and political parties, churches, youth and student organizations, labor unions, and other civil society associations;

- Analyze national legislation in a cross-country and regional comparative study to inform HRDs and CSOs;
- Identify a visible sub-regional leader or representative to make public condemnations and lead protests and demonstrations;
- Identify and publish an agreed-upon “black list” of draconian legislation to distribute to throughout the sub-region;
- Create an early-warning system to identify indicators of the “domino effect” of government back-sliding on human rights that has occurred in East Africa;
- Engage networks to carry out workshops on strategies for success in mobilizing civil society, tactics for working through limiting legislation, capacity building, and other coping mechanisms; and
- Lobby sub-regionally for a collective response to target a specific nation’s laws in need of reform.

As one participant asserted during the course of discussions, there is little question that the East African sub-region is in crisis as democratically established governments continue to backslide in an effort to maintain a monopoly on power and quell the activities and mobilizations of CSOs. Met by increasingly sophisticated limiting agents, such as anti-terrorism legislation and measures excluding foreign-funded operations, East African CSOs must continue to come up with creative and innovative strategies for combating these limiting environments, such as those identified in this document. Increased communication among nationally- and regionally-operating NGOs will continue to inform and improve the process of defending human rights; and a concerted effort to mobilize and inform the general public will strengthen the ability of HRDs to put pressure on governments and make changes in the legal landscape in which they operate.